14

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 801

J. H. CRAIN AND R. E. LEE WILSON, JR., Trustees of LEE WILSON & COMPANY, A Business Trust, *Petitioners*,

v.

UNITED STATES OF AMERICA, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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* * * it is elementary that repeals by implication are not favored. Only a clear repugnancy between the old law and the new results in the former giving way * * *. State of Georgia v. Pennsylvania Railroad Co., 324 U. S. 439, 456-457, 65 S. Ct. 716, 726.

INDEX.

	Page
Petition for a writ of certiorari	1
Opinion below	1
Jurisdiction	2
Questions presented	2
Statutes involved	2
Statement of the case	2
Specification of errors to be urged	4
Reasons for granting the writ	5
Conclusion	8
Appendix	9

CITATIONS.

CASES:

Becker Steel Co. of America v. *Cummings*, 296 U. S. 74	5
Bonwit Teller & Co. v. *United States*, 283 U. S. 258	7
Federal Intermediate Credit Bank v. *Mitchell*, 277 U. S. 213	5
Great Northern Life Ins. Co. v. *Read*, 322 U. S. 47	5
Ickes v. *Fox*, 300 U. S. 82	6
Richmond Screw Anchor Co. v. *United States*, 275 U. S. 331	7
Rosecrans v. *United States*, 165 U. S. 257	5
Stark v. *Wickard*, 321 U. S. 288	6
State of Georgia v. *Pennsylvania Railroad Co.*, 324 U. S. 439	5
Thompson v. *Deal*, 92 F. 2d 478	6
United States v. *Bang*, 117 F. 2d 515	7
United States v. *Borden Co.*, 308 U. S. 188	5
United States v. *Jackson*, 302 U. S. 628	5

STATUTES: Page

Judicial Code:

Section 24(20); 28 U. S. C. A. § 41(2) ..... passim
Section 240(a) 28 U. S. C. A. § 347 2

Soil Conservation and Domestic Allotment Act, Section 8(g); 16 U. S. C. A. § 590 h(g) ..... passim
31 U. S. C. A. § 74 6
31 U. S. C. A. § 203 ..... 6, 7

MISCELLANEOUS:

7 C. F. R. § 700.15(d) 8
7 C. F. R. Cum. Supp. § 701.411(d) 8
7 C. F. R. 1944 Supp. § 701.508(e) 8
82 Cong. Rec. 844 7
10 F. R. 509 8
10 F. R. 12795 8
H. Rept. No. 1767, 75th Cong., 3d Sess. 6

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

The petitioners, J. H. Crain and R. E. Lee Wilson, Jr., Trustees of Lee Wilson & Company, a business trust, pray that a writ of certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Eighth Circuit entered in the above entitled cause on November 7, 1945.

OPINION BELOW.

The District Court of the United States for the Eastern District of Arkansas did not file an opinion in this proceeding. Its findings of fact and conclusions of law are found

at pages 16-18 of the record. The opinion of the Circuit Court of Appeals (R. 41-44) is reported at 151 F. 2d 606.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on November 7, 1945 (R. 44). The jurisdiction of this Court is invoked under § 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED.

1. When Congress enacted the last sentence of § 8(g) of the Soil Conservation and Domestic Allotment Act, did it intend to nullify all of the preceding part of the section, if the Secretary of Agriculture or one of his agents failed to honor a proper assignment made thereunder, or did Congress merely intend that the Secretary and his agents should not be personally responsible for mistakes made in the administration of the Act?

2. May the rights of citizens and the jurisdiction of the Courts under the Tucker Act be curtailed by a mere provision exempting the Secretary of Agriculture and his agents from suit in the event that they disregard a legal assignment of a conservation payment and make payment to the assignor instead of the assignee?

STATUTES INVOLVED.

The statutes involved are § 24(20) of the Judicial Code and § 8(g) of the Soil Conservation and Domestic Allotment Act, the pertinent parts of which are printed in the Appendix, infra, pp. 9-10.

STATEMENT OF THE CASE.

Petitioners are trustees of Lee Wilson and Company, a common law business trust. This suit was instituted in the District Court of the United States for the Eastern District of Arkansas. The action was based upon a valid assignment

to petitioners by one R. O. Broughton of the latter's claim to soil conservation benefits for 1938 under the Soil Conservation and Domestic Allotment Act, 16 U. S. C. A. § 590a, et seq., and the program carried out thereunder. This program included ascertainment by the Department of Agriculture of acreage allotments for soil depleting crops, including cotton, and the payment of benefits to farmers for planting within the prescribed allotments. (R. 41.) Congress appropriated $500,000,000.00 to carry out the 1938 Soil Conservation Program which sum was made available until June 30, 1940, for allocation to applications of farmers for payment (R. 1-2, 9, 16).

Early in 1938 Broughton leased a 387 acre farm in Mississippi County, Arkansas, from J. H. Crain. Said Crain is managing trustee of Lee Wilson & Company, and as such is one of the petitioners in this case. The petitioners, as trustees, agreed to and did advance to Broughton cash, supplies, and services during 1938 to enable him to produce a crop on this farm. At the time Broughton leased the land and in consideration of petitioners' agreement to furnish the cash, supplies, and services, Broughton orally agreed to execute in favor of petitioners an assignment of his 1938 soil conservation benefits on a form provided by the Department of Agriculture when that form should become available. The form became available in May or June of 1938, and the assignment to petitioners was executed on December 21 of that year. (R. 16-17, 41-42.)

The District Court found as a fact that this assignment was executed solely for the purpose of securing the payment by Broughton to petitioners of the amounts due petitioners for the money, supplies, and services furnished to Broughton for the production of his crops in the year 1938 on the lands therein referred to (R. 17). This assignment was subsequently filed with the proper office of the Department of Agriculture (R. 10). During 1938 Broughton planted cotton within the acreage allotted to the farm operated by him, and it is not denied that he complied with

the requirements of the Soil Conservation Program (R. 41).

The local representatives of the Department of Agriculture thereafter prepared the proper form for Broughton to execute in order to secure payment of the benefits due him under the Soil Conservation Program. This application for payment *showed on its face* the amount of the assignment to petitioners. The application was approved by the local representatives of the Department of Agriculture on December 5, 1939, about a year after the assignment was made. (R. 3, 10, 16.)

On March 11, 1942, the Agricultural Adjustment Administration paid the amount of the claim to the assignor Broughton at which time it admittedly had knowledge of the assignment made by Broughton to petitioners (R. 10, 16).

Petitioners sued the United States under jurisdiction of the Tucker Act. The District Court, after a trial on the merits of the case, entered its judgment for petitioners for $687.57 (R. 18). On an appeal by the Government to the United States Circuit Court of Appeals for the Eighth Circuit, the judgment of the District Court was reversed with instructions to dismiss the complaint of petitioners (R. 44).

SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court erred:

1. In holding that § 8(g) of the Soil Conservation and Domestic Allotment Act deprived the District Court of the jurisdiction otherwise vested in it under the Tucker Act.

2. In holding that the jurisdiction of the District Courts may be repealed by implication.

3. In construing § 8(g) of the Soil Conservation and Domestic Allotment Act in *pari materia* with the general statute voiding the assignment of claims against the Government rather than as an exception to the general statute.

4. In failing to affirm the judgment of the District Court.

REASONS FOR GRANTING THE WRIT.

1. The Circuit Court of Appeals in reversing the District Court has decided an important federal question contrary to the applicable decisions of this Court and in doing so has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

The statutory language involved is the last sentence of § 8(g) of the Soil Conservation and Domestic Allotment Act, infra p. 10. It reads as follows:

> This provision [for assignments] shall not authorize any suit against or impose any liability *upon the Secretary* [of Agriculture] *or any disbursing agent* if payment to the farmer is made without regard to the existence of any such assignment. (Italics supplied.)

The opinion below holds that this language—

> • • • must *by implication* preclude a suit by an assignee *against the United States* under the Tucker Act, 28 U. S. C. A. Section 41(20). (Italics supplied; R. 43).

It has heretofore been believed to be well established that general statutes are not deemed to be repealed by implication unless no other reasonable construction can be applied.[1] This rule is particularly applicable in connection with statutes conferring jurisdiction[2] since authority to sue the sovereign—when once given—is to be liberally construed.[3]

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[1] *State of Georgia* v. *Pennsylvania Railroad Co.*, 324 U. S. 439, 456-457, 65 S. Ct. 716, 726; *United States* v. *Borden Co.*, 308 U. S. 188, 198, 60 S. Ct. 182; and *United States* v. *Jackson*, 302 U. S. 628, 631, 58 S. Ct. 390.

[2] Cf. *Federal Intermediate Credit Bank* v. *Mitchell*, 277 U. S. 213, 217, 48 S. Ct. 449; and *Rosecrans* v. *United States*, 165 U. S. 257, 262, 17 S. Ct. 302.

[3] *Great Northern Life Ins. Co.* v. *Read*, 322 U. S. 47, 54 (n. 5), 64 S. Ct. 873, and *Becker Steel Co. of American* v. *Cummings*, 296 U. S. 74, 80, 56 S. Ct. 15.

The reasonable construction required of the above quoted sentence is that that sentence was intended to protect the Secretary of Agriculture and the disbursing agents from suits against them for *personal liability* as a result of their paying the assignor instead of the assignee. Cf. *Ickes* v. *Fox,* 300 U. S. 82, 97, 57 S. Ct. 412; *Thompson* v. *Deal,* 67 App. D. C. 327, 335, 92 F. 2d 478, 486; 31 U. S. C. A. § 74; and H. Rept. No. 1767, 75th Cong., 3rd Sess., p. 60. Since the statutory language can be given a reasonable construction without repealing "by implication" the Tucker Act, the opinion of the Circuit Court of Appeals results in an unwarranted cancellation of part of the Tucker Act. And if § 8(g) can repeal the Tucker Act "by implication," countless other statutes on the books are capable of the same construction.

In view of the steadily increasing activities of the United States affecting the rights of its citizens, it is of paramount importance that a liberal construction of the Tucker Act be continued. The curtailing of the jurisdiction of the federal courts by implication obviously leads to and encourages administration of federal laws in line with the personal views of an administrator and often contrary to the will of Congress. As was said in *Stark* v. *Wickard,* 321 U. S. 288, 309, 64 S. Ct. 559—

> When * * * definite personal rights are created by federal statute, similar in kind to those customarily treated in courts of law, the silence of Congress as to judicial review is, at any rate in the absence of an administrative remedy, not to be construed as a denial of authority to the aggrieved person to seek appropriate relief in the federal courts in the exercise of their general jurisdiction. (Citations omitted.)

Had Congress in drafting § 8(g) intended to withdraw the consent of the United States to suits against it, Congress would have said so. It has done so before. 31 U. S. C. A. § 203.

2. The decision of the Circuit Court of Appeals is in probable conflict with the decision of this Court in *Bonwit Teller & Co.* v. *United States,* 283 U. S. 258, 263, 51 S. Ct. 395.

The opinion below refers to the general statute voiding assignments of claims against the government, 31 U. S. C. A. § 203, and then interprets § 8(g) of the Soil Conservation and Domestic Allotment Act as in *pari materia* with the general statute (R. 43). But § 8(g) is an express exception to the general statute. Under well established rules it should be construed so as to give the relief it was intended to provide. *Bonwit Teller & Co.* v. *United States, supra,* and cases cited. Cf. *Richmond Screw Anchor Co. v. United States,* 275 U. S. 331, 346, 48 S. Ct. 194; and *United States* v. *Bang,* 8 Cir., 117 F. 2d 515.

3. The question is of current public importance. As is well known, a large part of the farming in the South and Southwest is done by tenant farmers. Probably 90 per cent of these tenant farmers need financial assistance to plant, cultivate, and harvest their crops. This assistance is generally secured from the landlords or local banks. Congress recognized this practice and enacted § 8(g) for the express purpose of helping these tenant farmers to secure the necessary credit. 82 Cong. Rec. 844-845.

In view of this legislative purpose it can hardly be believed that Congress intended to encourage landlords and banks to loan money on assignments and yet to let the Secretary of Agriculture ignore these assignments and deprive the lender of his right to bring suit under the Tucker Act. This would amount in such cases practically to an entrapment.

The effect of the Circuit Court's decision, however, is to discourage the landlords from extending credit. Of what good is the tenant's assignment if the Secretary of Agriculture may at any time decide to ignore it and leave the security holder with a mere "scrap of paper"? Congress obviously intended that the Secretary and the disbursing agents should not be personally liable if they made a mis-

take and paid the assignor instead of the assignee, *but it surely did not intend to leave the assignee without a remedy.*

The statutory language here involved regarding assignments is *still in effect* and the regulations have not and still do not intimate that the assignments will be worthless at the whim of the Secretary of Agriculture. 16 U. S. C. A. § 590 h(g); 7 C. F. R. § 700.15 (d); 7 C. F. R. Cum. Supp. § 701.411(d); 7 C. F. R. 1944 Supp. § 701.508(e); 1945 Agricultural Conservation Program § 701.607(g), 10 F. R. 509, 512; and 1946 Agricultural Conservation Program § 701.-707(g), 10 F. R. 12795, 12798.

CONCLUSION.

Petitioners respectfully submit that the District Court correctly held that it had jurisdiction of this proceeding; that the judgment of the Circuit Court of Appeals should be reversed; and that to this end the petition for a writ of certiorari should be granted.

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February, 1946.

APPENDIX.

Tucker Act (Act of March 3, 1887, c. 359, 24 Stat. 505, as amended; 28 U. S. C. A. § 41 (20)):

SEC. 41. (JUDICIAL CODE, SECTION 24, AMENDED.) ORIGINAL JURISDICTION. The district courts shall have original jurisdiction as follows:

* * * * * * * * * *

(20) *Suits Against United States.* Twentieth. Concurrent with the Court of Claims, of all claims not exceeding $10,000.00 founded upon the Constitution of the United States or any law of Congress, or upon any regulation of an executive department, or upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect to which claims the party would be entitled to redress against the United States, either in a court of law, equity, or admiralty, if the United States were suable, and of all set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court; and of any suit or proceeding commenced after the passage of the Revenue Act of 1921, for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws even if the claim exceeds $10,000, if the collector of internal revenue by whom such tax, penalty, or sum was collected is dead or is not in office as collector of internal revenue at the time such suit or proceeding is commenced. Nothing in this paragraph shall be construed as giving to either the district courts or the Court of Claims jurisdiction to hear and determine claims growing out of the Civil War, and commonly known as "war claims," or to hear and determine other claims which had been rejected or reported on adversely prior to the 3rd day of March, 1887, by any court, department, or commission authorized to hear and determine the same, or to hear and determine

claims for pensions; or as giving to the district courts jurisdiction of cases brought to recover fees, salary, or compensation for official services of officers of the United States or brought for such purpose by persons claiming as such officers or as assignees or legal representatives thereof; but no suit pending on the 27th day of June, 1898, shall abate or be affected by this provision. No suit against the Government of the United States shall be allowed under this paragraph unless the same shall have been brought within six years after the right accrued for which the claim is made. The claims of married women, first accrued during marriage, of persons under the age of twenty-one years, first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the suit be brought within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively. All suits brought and tried under the provisions of this paragraph shall be tried by the court without a jury.

Soil Conservation and Domestic Allotment Act (Act of February 29, 1936, c. 104, 49 Stat. 1151; as amended, 16 U. S. C. A. § 590h(g):

* * * * * * * * *

SEC. 8. (g) A payment which may be made to a farmer under this section may be assigned, without discount, by him in writing as security for cash or advances to finance making a crop. Such assignment shall be signed by the farmer and witnessed by a member of the county or other local committee, or by the treasurer or the secretary of such committee, and filed with the county agent or the county committee. Such assignment shall include the statement that the assignment is not made to pay or secure any preexisting indebtedness. This provision shall not authorize any suit against or impose any liability upon the Secretary or any disbursing agent if payment to the farmer is made without regard to the existence of any such assignment.

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INDEX.

Page

Reply of petitioners to brief for United States in opposition 1

Statement 1

Argument 4

Conclusion 7

CITATIONS.

CASES:

Bowles v. *United States*, 319 U. S. 33 2
Great Northern Life Ins. Co. v. *Read*, 322 U. S. 47 . . 5
Great Northern Railway Co. v. *Steinke*, 261 U. S. 119 2
Paridy v. *Caterpillar Tractor Co.*, 48 F. 2d 166 2
Richmond Co. v. United States, 275 U. S. 331 4
United States v. *Lederer*, 140 F. 2d 136 2

STATUTES:

Agricultural Adjustment Act of 1938 (Act of February 16, 1938, c. 30, 52 Stat. 31, as amended):
Section 376 (7 U. S. C. A. § 1376) 5
Section 385 (7 U. S. C. A. § 1385) 5

Federal Register Act (Act of July 26, 1935, c. 417, 49 Stat. 500):
Section 5 (44 U. S. C. A. § 305) 2
Section 7 (44 U. S. C. A. § 307) 2

Soil Conservation and Domestic Allotment Act (Act of February 29, 1936, c. 104, 49 Stat. 1151, as amended):
Section 8(g) (16 U. S. C. A. § 590 h(g)) 4
Section 14 (16 U. S. C. A. § 590n) 5

Tucker Act (Act of March 3, 1887, c. 359, 24 Stat. 505, as amended; Judicial Code, § 24(20); 28 U. S. C. A. § 41(20)) 4

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On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

REPLY OF PETITIONERS TO BRIEF FOR UNITED STATES IN OPPOSITION.

The brief for the United States in opposition to the petition for a writ of certiorari was served on petitioners on March 6, 1946. This reply brief is filed pursuant to subdivision 4(a) of Rule 38 of the Revised Rules of the Supreme Court.

STATEMENT.

Respondent in its statement of the case (Br. 3-4) attempts to change the factual situation here involved by bringing into the case various Government documents not relied on by either of the courts below and, in one instance,

not even in the record. It is submitted that the picture should not be clouded in this manner.

The petition for a writ of certiorari presents solely a question of statutory construction, the asserted importance of which is not controverted by the Government. While the case should not be argued on its merits at this time, it is believed proper to reply briefly to the additional facts stated by respondent.

The letter of December 12, 1938, attempting to limit the time for making assignments, was a mere interoffice communication. The appropriation passed by Congress was made available until June 30, 1940 (R. 1-2, 9, 16). The letter of December 12, 1938, was not published in the Federal Register, and it is not shown that petitioners had actual notice of it. This letter accordingly does not have the effect of a regulation (Federal Register Act, §§5, 7; 44 U. S. C. A. §§305, 307) and can hardly in and of itself serve to limit the time fixed by Congress for making allocations of the appropriation.

Respondent next asks this Court (Br. 4) to take judicial notice of certain documents in the files of the Department of Agriculture which were never offered in evidence or even suggested to the District Court.[1] These documents, if pertinent, likewise go to the merits of the case and not to the question of statutory construction on which the Circuit Court reversed the trial court.

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[1] The papers here involved are not subject to judicial notice under the rationale of *Bowles* v. *United States*, 319 U. S. 33. In that case the petitioner throughout the proceedings had wanted the documents which the Court judicially noticed and all that the Government did was to present them to the Court. It is one thing to furnish, though belatedly, documents demanded by a litigant throughout the proceedings. It is something entirely different to attempt to bind a litigant by documents never requested by him and with respect to which he has had no opportunity to rebut their contents at the trial. *Great Northern Railway Co.* v. *Steinke*, 261 U. S. 119, 125-126; and *Paridy* v. *Caterpillar Tractor Co.*, 7 Cir., 48 F. 2d 166, 169, certiorari denied 278 U. S. 617. Cf. *United States* v. *Lederer*, 7 Cir., 140 F. 2d 136, 139, certiorari denied 322 U. S. 734.

Moreover, it is submitted that consideration of these documents is properly directed to the District Court. After a trial on the merits of the case the District Court held that the assignment made by Broughton—

> * * * was executed solely for the purpose of securing the payment by R. O. Broughton to [petitioners] of the amounts due [petitioners] by him for the money, supplies and services furnished to him for the production of his crops in the year 1938 * * * (R. 17).

This finding is supported by substantial evidence (R. 23-25).

It is a strange situation indeed if administrative law has reached the point where the administrator is permitted to deprive the trial court of the basis for the administrative action and then secure a reversal of the trial court's findings of fact by asking appellate courts to take judicial notice of papers allegedly on file in Washington, D. C., but never brought to the attention of the trial judge sitting in Arkansas. It is even stranger that an appellate court is asked to weigh the findings of fact of a trial court against the alleged findings of an administrative official which are brought before the court, if at all, by judicial notice suggested only in appellate proceedings.

That the trial court expressly found that the assignment met the requirements of the regulations, seems a complete answer to the asserted contrary finding of the Secretary of Agriculture.[2]

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[2] The documents printed as Appendix B of the Government's Brief do not mention the assignment here involved from Broughton. Thus this Court is asked to assume that Broughton's assignment is covered in those referred to in Appendix B. As a result, in addition to arguing on the basis of judicial notice (instead of the evidence of record), respondent would ask also that the Court assume the facts which it failed to prove and now fails to find in its documents. The Court is thus asked to move from the evidence of record, to papers on file somewhere in Washington, and then to reverse the trial court's findings of fact by drawing assumptions from documents which are not properly the subject of judicial notice.

ARGUMENT.

Respondent's first point appears to be that Congress, having originally enacted general legislation invalidating the assignment of claims against the Government and having subsequently enacted special legislation permitting the assignment of certain agricultural claims, intended in doing so to nullify the special legislation at the whim of the administrator by simply providing that the special legislation should not impose any liability on the "Secretary or any disbursing agent" *if* payment should *happen*[3] to be made to the assignor. Contrary to the Circuit Court's holding (R. 43) this limitation of liability would very definitely have "real meaning or effect" if a suit were brought personally against the Secretary of Agriculture or a disbursing agent.

In a footnote at the bottom of page 9 of its brief respondent seeks to distinguish *Richmond Co.* v. *United States*, 275 U. S. 331, by stating that the litigant therein had "a remedy specifically accorded him by statute to sue the United States." That is just the point. Petitioners herein do too. The Tucker Act gives the petitioners the same right to sue the United States as did the statute in the *Richmond Co.* case. The parallel seems complete.

In discussing point 2 of the argument respondent contends that § 8(g) of the Soil Conservation and Domestic Allotment Act "specifically withholds" jurisdiction over a suit by an assignee (Br. 9) and "expressly prohibits" such suits (Br. 10). This assertion goes far beyond even the holding of the Circuit Court. That Court felt obliged to say that § 8(g) "must *by implication* preclude a suit by an assignee" (R. 43; italics supplied). Since the District Court held that § 8(g) did not prevent a suit under the

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[3] Note the use of the word "happen" in this connection in the regulations cited by the Government (Br. top of p. 21). A fair reading of this so-called regulation suggests only that payment to the assignor might be made through inadvertence. There is no indication that the Secretary of Agriculture reserved any "veto" power over these assignments such as is now asserted in effect.

Tucker Act (R. 17) and the Circuit Court could hold otherwise only "by implication," it is difficult to see how § 8(g) can now be said "specifically" to withhold jurisdiction or "expressly prohibit" suits.

Respondent next takes exception to petitioners assertion that "authority to sue the sovereign—when once given—is to be liberally construed." Its premise seems to be that a litigant must find express authority to sue in every statute passed by Congress. Such is not the case. Authority to sue the Government on claims founded upon "any law of Congress" or upon "any contract, express or implied, with the Government" is found in the Tucker Act. Thus the Government has already provided the remedy.

It can readily be admitted that the suability of the sovereign must be restricted to the terms of the consent, but where, as here

> * * * authority to sue is given that authority is liberally construed to accomplish its purpose. *Great Northern Life Ins. Co.* v. *Read*, 322 U. S. 47, 54 (n. 5).

In the instant case it is not a question of imposing a liability upon a government without "clear words" as respondent contends (Br. 10, n. 6) because both the Tucker Act and the Soil Conservation and Domestic Allotment Act *are clear* The question, rather, is whether jurisdiction and consent to suit having once been given may be *repealed by implication.*

Respondent concludes with the suggestion that the determination as to the "facts constituting the bases for any payment" was reviewable only by the Secretary of Agriculture under § 14 of the Soil Conservation and Domestic Allotment Act.[4] The answer to this is that there is no dis-

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[4] In footnote 7 (Br. 11) respondent refers the Court to § 385 of the Agricultural Adjustment Act of 1938. If the suggestion is that these Acts are in *pari materia*, then the Court should also note § 376 of the cited Act which vests jurisdiction in the district court "specifically to enforce the provisions of this title" and provides that the "remedies and penalties provided for herein shall be in addition to, and not exclusive of, any of the remedies or penalties under existing law" (7 U. S. C. A. § 1376).

pute about "the facts constituting the bases for any payment" as evidenced by the fact that Broughton was paid. Respondent complains that the administrative determination must stand unless clearly wrong[5] (Br. 12, n. 8). So must the finding of facts of the District Court. As respondent points out—

> * * * there is nothing in the record to support a finding that this administrative decision was arbitrary, capricious, clearly wrong, or without reasonable or rational basis.

The reason is obvious. There is nothing in the record to show any administrative determination. By the same token there is nothing in the record to show that the findings of the District Court are erroneous.

In short, as pointed out above, this Court is asked to take judicial notice of documents *never* presented to the trial court and *to assume* that those documents cover an assignment from Broughton (who is not even mentioned in the documents). The Court is then asked to hold that the findings of fact of the trial court should be overruled because of the judicially noticed alleged findings of the Secretary of Agriculture. And in this connection the Court is to assume that these asserted administrative findings should apply to the case at bar and should supercede those of the District Court based on evidence adduced in open court.

It is respectfully submitted that if such a novel method of litigating is to be sanctioned it should only be after this Court has so decided.

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[5] If the so-called "voiding" of the assignment here involved (Br. 4, cf. Br. 12, n. 8) is an administrative determination, it is obviously "clearly wrong". The Secretary has no authority to void any assignment or to shorten without notice the time for filing assignments.

CONCLUSION.

Despite respondent's argument directed to the merits of the case and based primarily on matters not of record, the fact remains that the Circuit Court has sanctioned the repeal "by implication" of a jurisdictional statute contrary to the applicable decisions of this Court and has failed to interpret a remedial statute in line with the purpose it was to accomplish. It is not denied by respondent that the matter is of current public importance. The holding of the Circuit Court is wrong on the jurisdictional question decided and petitioners are entitled to prevail on the merits of their case as was decided by the District Court. The only question now presented is one of statutory construction and it should not be shunted by a prolonged discussion of documents never presented to the trial court.

Wherefore, it is prayed that the petition for a writ of certiorari will be granted.

Respectfully submitted,

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes and regulations involved	2
Statement	3
Argument	7
Conclusion	13
Appendix A	14
Appendix B	23

CITATIONS

Cases:	
Bates & Guild Co. v. *Payne*, 194 U. S. 106	12
Board v. *Hearst Publications*, 322 U. S. 111	12
Bonwit Teller & Co. v. *United States*, 283 U. S. 258	9
Bowles v. *United States*, 319 U. S. 33	4
Decatur v. *Paulding*, 14 Pet. 497	12
Dismuke v. *United States*, 297 U. S. 167	11, 12
Gray v. *Powell*, 314 U. S. 402	12
Great Northern Ins. Co. v. *Read*, 322 U. S. 47	8, 10
Ickes v. *Fox et al.*, 300 U. S. 82	8
Louisiana v. *McAdoo*, 234 U. S. 627	12
Lynch v. *United States*, 292 U. S. 571	11
Martin v. *National Surety Co.*, 300 U. S. 588	8
Mine Safety Appliances Co. v. *Forrestal*, No. 71, October Term, 1945, decided December 10, 1945	9
Moore v. *United States*, 45 F. Supp. 656	11
Ness v. *Fisher*, 223 U. S. 683	12
Pine Hill Co. v. *United States*, 259 U. S. 191	10
Richmond Co. v. *United States*, 275 U. S. 331	9
Silberschein v. *United States*, 266 U. S. 221	12
Stark v. *Wickard*, 321 U. S. 288	9
Thompson v. *Deal*, 92 F. 2d 478	9
United States v. *Atchison, T. & S. F. Ry. Co.*, 249 U. S. 451	12
United States v. *Babcock*, 250 U. S. 328	11
United States v. *Michel*, 282 U. S. 656	10
United States v. *Shaw*, 309 U. S. 495	10
United States v. *Sherwood*, 312 U. S. 584	10
United States v. *U. S. Fidelity Co.*, 309 U. S. 506	10
Williamsport Co. v. *United States*, 277 U. S. 551	12
Work v. *Rives*, 267 U. S. 175	7

Statutes and Regulations:	Page
Act of June 25, 1910, c. 423, 36 Stat. 851, as amended July 1, 1918, c. 114, 40 Stat. 704	9
Agricultural Adjustment Act of 1938, § 385, 7 U. S. C. § 1385	11, 12, 18
Judicial Code, § 24 (20), 28 U. S. C. § 41 (20)	10
Soil Conservation and Domestic Allotment Act, 16 U. S. C. §§ 590a–590q:	
§ 7 (a)	12, 14
§ 8 (a)	15
§ 8 (b)	11, 15
§ 8 (d)	11, 17
§ 8 (g)	2, 5, 12, 17
§ 14	11, 12, 18
R. S. § 3477, 31 U. S. C. § 203	7
R. S. § 3737, 41 U. S. C. § 15	7
Miscellaneous:	
Comp. Gen. Dec. A–80449, May 27, 1941	4
H. Rep. No. 1767, 75th Cong., 3d Sess.	8
Regulations of the Agricultural Adjustment Administration (7 CFR 700.15 (d))	22
U. S. Department of Agriculture Instructions (ACP-70, April 9, 1938)	19

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 801

J. H. CRAIN AND R. E. LEE WILSON, JR., TRUSTEES OF LEE WILSON & COMPANY, A BUSINESS TRUST, PETITIONERS

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The findings of fact and conclusions of law of the District Court of the United States for the Eastern District of Arkansas, Jonesboro Division (R. 16–18), were entered without an opinion. The opinion of the United States Circuit Court of Appeals for the Eighth Circuit (R. 40–44) is reported at 151 F. 2d 606.

JURISDICTION

The judgment of the District Court was entered on November 28, 1944 (R. 18). The judgment of

the Circuit Court of Appeals was entered on November 7, 1945 (R. 44). The petition for a writ of certiorari was filed on February 4, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Petitioners[1] are the assignees of one Broughton's claim to soil conservation benefits for 1938 under the Soil Conservation and Domestic Allotment Act, 16 U. S. C. §§ 590a–590q. With knowledge of this assignment, the officials of the Department of Agriculture made the benefit payments to Broughton. The question presented is whether petitioners may maintain an action against the United States based on the assignment, particularly in view of the provision in Section 8 (g) of the Act that it does "not authorize any suit against or impose any liability upon the Secretary or any disbursing agent if payment to the farmer is made without regard to the existence of any such assignment" (16 U. S. C. § 590h (g)).

STATUTES AND REGULATIONS INVOLVED

The relevant portions of the statutes and regulations involved are set forth in Appendix A, pp. 14–22.

[1] See fn. 8, *infra*.

STATEMENT

On May 29, 1944, petitioners brought this suit against the United States under Section 24 (20) of the Judicial Code (the Tucker Act, 28 U. S. C. § 41 (20) (R. 1), seeking judgment in the amount of $738.99 (R. 1, 4) on a claim based upon an assignment to Lee Wilson & Company[2] by one Broughton of his claim to soil conservation benefits for 1938 under the Soil Conservation and Domestic Allotment Act (R. 3–4).

Early in 1938 Broughton leased a farm of 387 acres from petitioner Crain (R. 2, 9, 16, 23, 33). Pursuant to the Soil Conservation and Domestic Allotment Act, the Secretary of Agriculture made a cotton acreage allotment for the farm for the year 1938 which was not exceeded by Broughton (R. 2–3, 9, 16). The assignment to Lee Wilson & Company was executed by Broughton on December 21, 1938, on a form provided by the Department of Agriculture (R. 3, 10–15, 16). On December 12, 1938, the Director of the Southern Division of the United States Department of Agriculture Agricultural Adjustment Administration had directed that:

> No assignment of payments under the 1938 Agricultural Conservation Program may hereafter be accepted unless (1) there is no prior assignment outstanding; and

[2] Lee Wilson & Company is a common law business trust of which petitioners are the trustees, petitioner Crain being the managing trustee (R. 1, 9, 16).

> (2) the producer making such assignment shows definitely that the assignment is being made as security for cash or advances which will be used to finance the planting of a crop in 1938 for harvest in 1939 or the carrying out of an approved soil-building practice in 1938. (R. 15.)

On April 9, 1941, the Broughton assignment was declared void by the Secretary of Agriculture [3] for the reason that it was not executed in compliance with Section 8 (g) of the Soil Conservation and Domestic Allotment Act (*infra*, p. 17) "and the governing regulations" (*infra*, pp. 19–22). On March 11, 1942, the Agricultural Adjustment Administration paid to Broughton the amount payable to him under the 1938 conservation program (R. 10, 16) and payment to petitioners was refused (R. 10, 16).

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[3] The action of the Secretary of Agriculture and other officials of the Department of Agriculture respecting the assignment here in issue was one item of a large number of contemporary actions and determinations relating to the activities of Lee Wilson & Company. The considerations and recommendations respecting all these matters and the official actions thereon were grouped together by the Department of Agriculture in a single series of documents which are a matter of public record in the Department of Agriculture and of which judicial notice may be taken by this Court. *Bowles* v. *United States*, 319 U. S. 33. Because of the volume of these documents, excerpts have been made of the parts relating to assignments and specifically those executed in December 1938. These excerpts appear in Appendix B, pp. 23–28, *infra*. The Comptroller General approved the administrative determination of the Secretary of Agriculture on May 27, 1941 (A–80449).

The amended answer (R. 5–8) filed herein by the respondent denied petitioners' allegation of jurisdiction under the Tucker Act and denied that petitioners were owed any money under the 1938 conservation program promulgated pursuant to the Soil Conservation and Domestic Allotment Act (R. 5). The amended answer averred that the Broughton assignment was invalid in that it "was not timely executed" and further "was obtained not as security for cash or advances to finance the making of the 1938 crop but for the purpose of effecting collection of amount due [petitioners] by said Broughton" (R. 8).[4] The amended answer further alleged that no suit was authorized against the United States on a claim such as that asserted by petitioners and that no claim was stated against the respondent upon which relief could be granted (R. 8).

On November 28, 1944, the District Court issued its findings of fact (R. 16–17) and conclusions of law (R. 17–18) and entered judgment for petitioners in the amount of $687.57 (R. 18). The District Court found that petitioners had early in 1938 (R. 3, 9, 16) advanced to Broughton "cash, supplies and services, in order to enable [him] to produce a crop in * * * 1938"; that "concurrently" with petitioners' agreement to furnish

[4] Cf. Section 8 (g) of the Soil Conservation and Domestic Allotment Act, 16 U. S. C. § 590h (g); Appendix A, *infra*, p. 17; R. 15.

Broughton with cash, supplies, and services "and in consideration of such agreement to furnish, * * * Broughton agreed to execute an assignment to [petitioners], under * * * section 8 (g) of the Soil Conservation and Domestic Allotment Act * * * on a form prescribed by the Department of Agriculture when such printed form should become available"; and that, although the necessary assignment forms became available in May or June 1938 (R. 10, 16, 26), the Broughton assignment of December 21, 1938 (R. 11–15), was executed by Broughton pursuant to his earlier oral agreement and "solely for the purpose of securing the payment by R. O. Broughton to [petitioners] of the amounts due [petitioners] by him for the money, supplies and services furnished to him for the production of his crops in * * * 1938" (R. 16–17). The District Court concluded that petitioners were entitled to maintain the action, that the court was "not bound by the action of the Secretary of Agriculture in denying payments" to petitioners, and that the assignment of December 21, 1938, "relates back to the oral agreement for its execution, and was a valid assignment" (R. 17).

On appeal to the Circuit Court of Appeals (R. 18–19), the judgment of the District Court was reversed and the cause remanded "with instruction to dismiss the complaint" (R. 44).

ARGUMENT

The court below held "that the last sentence of Section 8(g) of the Soil Conservation Act expressly prohibits suit against the Secretary of Agriculture or any disbursing agent if payment is made to the farmer notwithstanding existence of an outstanding assignment" and that, to give that sentence "real meaning or effect", "suit by an assignee against the United States under the Tucker Act" was precluded (R. 43). We submit that this determination was clearly correct.

1. Absent specific congressional provision for the assignment of soil conservation benefit payments, the invalidity of the Broughton assignment would be beyond question. R. S. § 3477, 31 U. S. C. § 203; R. S. § 3737, 41 U. S. C. § 15. That provision is to be found in Section 8(g) of the Soil Conservation and Domestic Allotment Act, 16 U. S. C. § 590h(g). That section, however, specifically recognizes that "payment to the farmer" may be "made without regard to the existence of any such assignment" and provides that in such event Section 8(g) "shall not authorize any suit against or impose any liability upon the Secretary [of Agriculture] or any disbursing agent". The court below was clearly correct in holding that the latter provision could have no "real meaning or effect" unless it precluded "a suit by an assignee against the United States under the Tucker Act" (R. 43). Cf. *Work* v.

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Rives, 267 U. S. 175. "Otherwise," as stated by the court below, "the United States could be subjected to a double liability which we believe Congress intended to prohibit" (R. 43). Cf. *Martin* v. *National Surety Co.,* 300 U. S. 588, 594.

Congress, in providing for the assignment of payments, made a concession which it could and did condition as it saw fit. The conditions surrounding the assignments provided for in Section 8 (g), and particularly the limitation on suit by the assignee in the event that payment is made to the assignor in disregard of the assignment, clearly reflect a congressional intent that the administration of the program of benefits provided for by the Soil Conservation and Domestic Allotment Act should not be retarded or obstructed by wrangling over assigned claims. Cf. *Martin* v. *National Surety Co.,* 300 U. S. 588, 594; *Great Northern Ins. Co.* v. *Read,* 322 U. S. 47, 54. Moreover it is inconceivable that Congress could have intended that an assignee might sue the United States to recover money which the Secretary of Agriculture had paid to the assignor under express statutory authority.[5]

[5] H. Rep. No. 1767, 75th Cong., 3d Sess., p. 60, cited by petitioners (Pet. 6), lends no support to their argument that the limitation on suit contained in Section 8 (g) of the Soil Conservation and Domestic Allotment Act was intended merely to protect the Secretary of Agriculture and disbursing agents from personal liability. Nor do the cases cited by petitioners (Pet. 6) stand for that proposition. In *Ickes* v. *Fox et al.,* 300 U. S. 82, an injunction suit brought against

2. It is thus clear that the Soil Conservation and Domestic Allotment Act specifically withholds jurisdiction over a suit by assignees such as petitioners. Nor is the consent of the United States to be sued on claims of this sort to be found elsewhere. Petitioners base their action on the Tucker Act, which gives the district courts original jurisdiction of certain suits against the United States on claims "founded upon the Constitution of the United States or any law of Con-

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the Secretary of the Interior in the District of Columbia, this Court held merely that the United States was not an indispensable party. *Thompson* v. *Deal*, 92 F. 2d 478 (App. D. C.), indicates that in some circumstances a government official may be required by bill in equity brought against him personally to pay over money in which the United States has no pecuniary interest and which is in his possession under an invalid law. See *Mine Safety Appliances Co.* v. *Forrestal*, No. 71 this Term, decided December 10, 1945.

Other cases cited by petitioners (Pet. 6–7) are likewise not in point. *Stark* v. *Wickard*, 321 U. S. 288, likewise was an injunction suit against the Secretary of Agriculture, brought in the District Court for the District of Columbia which "has a general equity jurisdiction authorizing it to hear the suit". 321 U. S. at 290. *Bonwit Teller & Co.* v. *United States*, 283 U. S. 258, 263, merely held that a "section * * * of a tax law giving to taxpayers opportunity to secure refund of overpayments that had become barred * * * is to be construed liberally in favor of the taxpayers." In *Richmond Co.* v. *United States*, 275 U. S. 331, this Court held R. S. § 3477, 31 U. S. C. § 203, inapplicable to the assignment of a patent in a situation where its application would have deprived the patent owner of a remedy specifically accorded him by statute to sue the United States in the Court of Claims. Act of June 25, 1910, c. 423, 36 Stat. 851, as amended July 1, 1918, c. 114, 40 Stat. 704, 705.

gress, or upon any regulation of an executive department, or upon any contract, express or implied, with the Government of the United States * * *". 28 U. S. C. § 41 (20).[6] But the Tucker Act does not create petitioners' cause of action. By its very terms, it merely gives the sovereign's consent to be sued in the district courts upon such causes of action as may be founded upon the Constitution, a law of Congress, or a contract with the United States. Petitioners claim that their cause of action arises under the Soil Conservation and Domestic Allotment Act (R. 1). If so, since petitioners are assignees, it must arise under Section 8 (g) and, as shown above, that section, while providing for assignments, expressly prohibits suits thereon. The mere fact that the United States creates rights does not obligate it to provide a remedy against itself through the courts.

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[6] Contrary to petitioners' assertion (Pet. 5) that "authority to sue the sovereign—when once given—is to be liberally construed", it is well settled that the jurisdictional provision invoked by petitioners must be construed "with that conservatism which is appropriate in the case of a waiver of sovereign immunity" (see *United States* v. *Sherwood*, 312 U. S. 584, 590) and that "a liability in any case is not to be imposed upon a government without clear words". See *Pine Hill Co.* v. *United States*, 259 U. S. 191, 196. See also *United States* v. *Shaw*, 309 U. S. 495, 500–501; *United States* v. *U. S. Fidelity Co.*, 309 U. S. 506, 512–513; *United States* v. *Michel*, 282 U. S. 656, 659; and *Great Northern Ins. Co.* v. *Read*, 322 U. S. 47, cited by petitioners (Pet. 5) in support of their "liberal construction" argument, but which squarely holds that suability of the sovereign must be restricted "to the terms of the consent". 322 U. S. at 54.

United States v. *Babcock,* 250 U. S. 328, 331; *Lynch* v. *United States,* 292 U. S. 571, 580–582; *Dismuke* v. *United States,* 297 U. S. 167, 171–172. Nor does examination of other sections of the Soil Conservation and Domestic Allotment Act reveal a legislative intent to afford a remedy by suit against the United States to recover soil conservation benefits even in the absence of an assignment. Cf. *Moore* v. *United States,* 45 F. Supp. 656 (S. D. Iowa). Indeed the Act is replete with evidence of the congressional intent to vest full authority and discretion in the Secretary of Agriculture.[7] And the principle has long been recognized that courts will not review the exercise of executive discretion such as that vested

[7] In Section 8 (b) the Secretary is authorized to make payments "to agricultural producers * * * in amounts determined by [him] to be fair and reasonable". Such payments may be measured by the producers' "equitable share, as determined by the Secretary, of the normal national production of any commodity * * * required for domestic consumption" or by "their equitable share, as determined by the Secretary, of the national production of any commodity * * * required for domestic consumption and exports adjusted to reflect the extent to which their utilization of cropland * * * conforms to farming practices which the Secretary determines will best effectuate" the policies of the Act. Section 8 (d) requires that payments shall be "conditioned upon the utilization of the land * * * in conformity with farming practices which the Secretary finds tends to effectuate" the policies of the Act. And Section 14 provides that the facts constituting the bases for any payment or grant made under Section 8 "shall be reviewable only by the Secretary of Agriculture". See also Section 385 of the Agricultural Adjustment Act of 1938, 7 U. S. C. § 1385.

in the Secretary of Agriculture by the Soil Conservation and Domestic Allotment Act with respect to the making of benefit payments or grants of other aid. *Decatur* v. *Paulding*, 14 Pet. 497; *Ness.* v. *Fisher*, 223 U. S. 683; *Louisiana* v. *McAdoo*, 234 U. S. 627; *United States* v. *Atchison, T. & S. F. Ry. Co.*, 249 U. S. 451; *Silberschein* v. *United States*, 266 U. S. 221; *Williamsport Co.* v. *United States*, 277 U. S. 551; cf. *Dismuke* v. *United States*, 297 U. S. 167, 172.[8]

[8] Even if this principle were inapplicable to this case, the decision below would command support as the only one consistent with well-established principles of judicial review of administrative action. The basic question in the case was whether the Broughton assignment had been given to secure "cash or advances to finance making a crop" or a "preexisting indebtedness". 16 U. S. C. § 590h (g). This was a factual question which had been determined adversely to petitioners by the Department of Agriculture (Appendix B, pp. 23–28, *infra*). Under Section 14 of the Soil Conservation and Domestic Allotment Act, 16 U. S. C. § 590n, that determination was reviewable only by the Secretary. (Cf. Section 385 of the Agricultural Adjustment Act of 1938, 7 U. S. C. § 1385.) It must stand unless shown to be arbitrary or capricious, clearly wrong, or without reasonable or rational basis. *Bates & Guild Co.* v. *Payne*, 194 U. S. 106; *Gray* v. *Powell*, 314 U. S. 402; *Board* v. *Hearst Publications*, 322 U. S. 111; cf. *Dismuke* v. *United States*, 297 U. S. 167, 172. There is nothing in the record to support a finding that this administrative decision was arbitrary, capricious, clearly wrong, or without reasonable or rational basis. Indeed, if the administrative action be examined in the light of the facts (R. 10, 16, 25–26, 28, 33), any other determination seemingly would have been in conflict not only with the policies of the Act (§ 7 (a), 16 U. S. C. § 590g (a)), but also with the express provisions thereof (§ 8 (g), 16 U. S. C. § 590h (g))

CONCLUSION

The decision is clearly correct and there is no conflict of authorities. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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FEBRUARY 1946.

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and the regulations of the Department of Agriculture relating to assignments (R. 15, 9; *infra*, pp. 19–22; note particularly the following instructions: I D *infra*, p. 20; III A, *infra*, p. 21; see also §§ I F, *infra*, pp. 20–21; VI A, *infra*, p. 21; and VI B, *infra*, pp. 21–22.)

APPENDIX A

I. Statutes Involved

The Soil Conservation and Domestic Allotment Act, 16 U. S. C. §§ 590a–590q, provides, in part, as follows:

> Sec. 7. (a) It is hereby declared to be the policy of this Act also to secure, and the purposes of this Act shall also include, (1) preservation and improvement of soil fertility; (2) promotion of the economic use and conservation of land; (3) diminution of exploitation and wasteful and unscientific use of national soil resources; (4) the protection of rivers and harbors against the results of soil erosion in aid of maintaining the navigability of waters and water courses and in aid of flood control; and (5) reestablishment, at as rapid a rate as the Secretary of Agriculture determines to be practicable and in the general public interest, of the ratio between the purchasing power of the net income per person on farms and that of the income per person not on farms that prevailed during the five-year period August 1909–July 1914, inclusive, as determined from statistics available in the United States Department of Agriculture, and the maintenance of such ratio. The powers conferred under sections 7 to 14, inclusive, of this Act shall be used to assist voluntary action calculated to effectuate the purposes specified in this section. * * *
>
> * * * * * *

Sec. 8. (a) In order to carry out the purposes specified in section 7 (a) during the period necessary to afford a reasonable opportunity for legislative action by a sufficient number of States to assure the effectuation of such purposes by State action and in order to promote the more effective accomplishment of such purposes by State action thereafter, the Secretary shall exercise the powers conferred in this section during the period prior to January 1, 1947, except with respect to farming operations commenced in any State after the effective date of a State plan for such State approved pursuant to section 7. No such powers shall be exercised after December 31, 1946, except with respect to payments or grants in connection with farming operations carried out prior to January 1, 1947.

(b) Subject to the limitations provided in subsection (a) of this section, the Secretary shall have power to carry out the purposes specified in clauses (1), (2), (3), (4), and (5) of section 7 (a) by making payments or grants of other aid to agricultural producers, including tenants and sharecroppers, in amounts determined by the Secretary to be fair and reasonable in connection with the effectuation of such purposes during the year with respect to which such payments or grants are made, and measured by (1) their treatment or use of their land, or a part thereof, for soil restoration, soil conservation, or the prevention of erosion; (2) changes in the use of their land; (3) their equitable share, as determined by the Secretary, of the normal national production of any commodity or commodities required for domestic con-

sumption; or (4) their equitable share, as determined by the Secretary, of the national production of any commodity or commodities required for domestic consumption and exports adjusted to reflect the extent to which their utilization of cropland on the farm conforms to farming practices which the Secretary determines will best effectuate the purposes specified in section 7 (a); or (5) any combination of the above. In arid or semiarid sections, (1) and (2) above shall be construed to cover water conservation and the beneficial use of water on individual farms, including measures to prevent run-off, the building of check dams and ponds, and providing facilities for applying water to the land. In determining the amount of any payment or grant measured by (1) or (2) the Secretary shall take into consideration the productivity of the land affected by the farming practices adopted during the year with respect to which such payment is made. In carrying out the provisions of this section in the continental United States, the Secretary is directed to utilize the services of local and State committees selected as hereinafter provided. * * * The Secretary shall make such regulations as are necessary relating to the selection and exercise of the functions of the respective committees, and to the administration, through such committees, of such programs. In carrying out the provisions of this section, the Secretary shall, as far as practicable, protect the interests of tenants and sharecroppers; * * * shall, in every practicable manner, protect the interests of small producers; and shall in every practicable way encourage and provide for soil-conserving and soil-rebuilding practices

rather than the growing of soil-depleting crops. Rules and regulations governing payments or grants under this subsection shall be as simple and direct as possible, and, wherever practicable, they shall be classified on two bases: (a) Soil-depleting crops and practices, (b) soil-building crops and practices. * * *

* * * * *

(d) Any payment or grant of aid made under subsection (b) shall be conditioned upon the utilization of the land, with respect to which such payment is made, in conformity with farming practices which the Secretary finds tend to effectuate any one or more of the purposes specified in clause (1), (2), (3), (4), or (5) of section 7 (a).

* * * * *

(g) A payment which may be made to a farmer under this section, may be assigned, without discount, by him in writing as security for cash or advances to finance making a crop. Such assignment shall be signed by the farmer and witnessed by a member of the county or other local committee, or by the treasurer or the secretary of such committee, and filed with the county agent or the county committee. Such assignment shall include the statement that the assignment is not made to pay or secure any preexisting indebtedness. This provision shall not authorize any suit against or impose any liability upon the Secretary or any disbursing agent if payment to the farmer is made without regard to the existence of any such assignment.

* * * * *

SEC. 9. The Secretary is authorized to conduct surveys, investigations, and re-

search relating to the conditions and factors affecting, and methods of accomplishing most effectively, the policy and purposes of section 7 (a). Notwithstanding any provision of existing law, the Secretary is authorized to make public such information as he deems necessary to carry out the provisions of this Act. * * *

* * * * *

SEC. 14. The facts constituting the bases for any payment or grant or the amount thereof authorized to be made under section 7 or 8 hereof, when officially determined in conformity with rules or regulations prescribed by the Secretary of Agriculture, shall be reviewable only by the Secretary of Agriculture.

Section 385 of the Agricultural Adjustment Act of 1938, 7 U. S. C. § 1385, provides:

Section 385. The facts constituting the basis for any Soil Conservation Act payment, parity payment, or loan, or the amount thereof, when officially determined in conformity with the applicable regulations prescribed by the Secretary or by the Commodity Credit Corporation, shall be final and conclusive and shall not be reviewable by any other officer or agency of the Government. In case any person who is entitled to any such payment dies, becomes incompetent, or disappears before receiving such payment, or is succeeded by another who renders or completes the required performance, the payment shall, without regard to any other provisions of law, be made as the Secretary of Agriculture may determine to be fair and reasonable in all the circumstances and provide by regulations.

II. Regulations Involved

United States Department of Agriculture instructions (ACP–70, April 9, 1938) relating to assignments and use of Form ACP–69 (R. 11–15), pursuant to Section 8 (g) of the Soil Conservation and Domestic Allotment Act, provide, in part, as follows:

I. PURPOSE AND SCOPE OF ASSIGNMENTS

A. *To finance making a crop.*—A payment which may be made to a farmer (hereinafter referred to as the "assignor") under section 8 of the Soil Conservation and Domestic Allotment Act, as amended, may be assigned only as security for cash or advances to finance making a crop. To finance making a crop means (1) to finance the planting, cultivating, or harvesting of a crop, including the purchase of equipment required therefor; (2) to provide food, clothing, and other necessities required by the assignor or persons dependent upon the assignor for the purpose of making a crop; or (3) to finance the carrying-out of soil-building or range-building practices. Nothing contained herein shall be construed to authorize an assignment given to secure the payment of the whole or any part of the purchase price of a farm or the payment of the whole or any part of a cash or fixed commodity rent for a farm.

B. *Cash or advances.*—An assignment may be given (1) to secure repayment of cash advanced to the assignor to cover the cost of supplies or services required by him to make a crop, (2) to secure payment for supplies or services furnished to the assignor to make a crop, or (3) to secure the

repayment of cash or the cash value of supplies or services being advanced in successive installments or on the order of the assignor pursuant to a contract or agreement. The amount of the cash or the cash value of the supplies or services must be stated exactly. * * *

* * * * *

D. *The current crop year.*—The cash, supplies, or services must be advanced to the assignor to finance making a crop during the year current at the time the assignment is made and must not be made to secure or pay any preexisting indebtedness of any nature whatsoever. The assignment shall be effective only with respect to the payments which may be or become due and payable to the assignor for participation in the program under section 8 of the Soil Conservation and Domestic Allotment Act, as amended, for the year current at the time the assignment is given. The unpaid balance of any amount advanced in 1 year and secured by an assignment cannot be secured by an assignment of any payments which may become due and payable to the assignor for participation in the program for any subsequent year.

* * * * *

F. *Payment to the assignee.*—Unless the indebtedness secured by an assignment has been repaid or otherwise discharged prior to the time application for payment is made by the assignor, the amount of the payment to which the assignor is entitled under his application, or any amount equal to the indebtedness, or the amount of the indebtedness which remains unpaid or discharged, whichever is the smallest, will be paid directly to the assignee: *Provided, however,*

That in case payment should happen to be made to the assignor there is no authority of law for any suit against or the imposition of any liability upon the Secretary of Agriculture or any disbursing agent.

* * *

* * * * *

III. EXECUTION OF ASSIGNMENT

A. *In writing.*—The assignor must execute the original and two copies of part I of Form ACP–69. Assignments made orally or in writing upon forms other than Form ACP–69 shall not be recognized by the United States. The term "Form ACP–69" means the official prescribed form bearing that designation and printed by the United States Government Printing Office.

* * * * *

VI. MISCELLANEOUS

A. *Effect of assignment.*—An assignment shall not become effective insofar as the United States is concerned until application for payment is made by the assignor, his heirs, or a fiduciary who by virtue of his office succeeds to the right of the assignor to make such application and it is administratively determined that such payment is to be made. Any assignment made shall be subject to the provisions of the program under which the payment is made and to all rights of counterclaim, recoupment, or set-off to which the United States is entitled.

B. *Liability of the Secretary or disbursing agents.*—Neither the Secretary of Agriculture nor any disbursing agent shall be liable in any suit if payment is made to the assignor without regard to the existence of any assignment and nothing con-

tained herein shall be construed to authorize any suit against the Secretary of Agriculture or any disbursing agent if payment is not made to the assignee or if payment is made to only one of several assignees.

Section 700.15(d) of the Regulations of the Agricultural Adjustment Administration (7 C. F. R. 700.15 (d)) provides:

> (d) Assignments. Any person who may be entitled to any payment in connection with the 1938 Agricultural Conservation Program may assign his interest in such payment as security for cash loaned or advances made for the purpose of financing the making of a crop in 1938. No such assignment will be recognized unless (1) the assignment is made in writing on Form ACP–69 in accordance with instructions issued by the Agricultural Adjustment Administration, and is filed in the office of the county agricultural conservation association; (2) the farmer files with the assignment a statement that the assignment is made to pay or secure an indebtedness incurred in connection with financing the making of a crop in 1938 and not to pay or secure any pre-existing indebtedness; and (3) the person to whom such assignment is made certifies that the payment is being assigned without discount for such purpose.
>
> Nothing contained in this section shall be construed to give an assignee a right to any payment other than that to which the farmer is entitled nor shall the Secretary or any disbursing agent be subject to any suit or liability if payment is made to the farmer without regard to the existence of any such assignment.

APPENDIX B

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION
WASHINGTON, D. C.

MARCH 17, 1941.

MEMORANDUM TO THE SECRETARY

Re: Determination as to bases for settlement of cases of Lee Wilson and Company and its tenants and sharecroppers under the Agricultural Adjustment and Conservation Programs for 1933 through 1939 and related programs, Mississippi County, Arkansas

DEAR MR. SECRETARY: There are transmitted herewith an executed copy of the joint recommendations of the Arkansas State Agricultural Conservation Committee and the Mississippi County Agricultural Conservation Committee and a copy of the report of the 1940 investigating committee, with exhibits as listed in the latter, in connection with the application for payment filed by Lee Wilson and Company and its tenants and sharecroppers under the Agricultural Adjustment and Conservation Programs and related programs for the years 1933–1939, both inclusive. Also attached are a copy of the 1939 investigating committee's report and a copy of the report dated June 19, 1939, by John G. Wilcox, investigator, in connection with certain phases of these cases.

* * * * *

Assignments

Many assignments of payments under the 1938 or 1939 Agricultural Conservation Programs which were made to the Company or others by its tenants or sharecroppers were declared void because they were not executed in accordance with section 8 (g) of the Soil Conservation and Domestic Allotment Act as amended, and the governing regulations (ACP–70). We see no reason to disturb the findings so made.

* * * * *

Except as indicated otherwise hereinabove, we approve the findings and recommendations of the Investigating Committee and the joint recommendations of the State Committee and County Committee.

* * * * *

If you approve the recommendations herein made, we recommend that such approval be indicated by your signature in the space provided below, and such approval will be taken as constituting your administrative determination of the bases for settlement of the cases herein dealt with. If you so approve, we also recommend that you sign and forward the attached letter to the Comptroller General, accompanied by the documents therein described, and that no action be taken to carry out your determination unless and until he shall have notified you that he finds no objection to final settlement of these cases on the basis of your determination.

Respectfully submitted:

(S) C. D. WALKER,
Acting Director, Southern Division,
Agricultural Adjustment Administration.

APRIL 9, 1941.

Approved:

(S) GROVER B. HILL,
1941, Acting Secretary of Agriculture.

Concurring:

(S) MASTIN G. WHITE,
Solicitor.

(S) R. M. EVANS,
Administrator,
Agricultural Adjustment Administration.

JOINT RECOMMENDATION OF THE ARKANSAS STATE COMMITTEE AND THE MISSISSIPPI COUNTY COMMITTEE IN THE CASES OF LEE WILSON AND COMPANY AND ITS TENANTS HEARD ON NOVEMBER 7 AND 8, 1940, IN THE STATE OFFICE AT 421½ WEST CAPITAL AVENUE

Present at the hearing were: R. C. Branch, Kit Phillips, C. C. Cox, C. C. Willey, and Jim Keith, members of the Arkansas State Agricultural Conservation Committee; J. B. Daniels, Administrative Officer in Charge; E. B. Chiles, Fred Davis, and C. R. Coleman, members of the County Committee from Mississippi County, E. H. Burns, County Agent of South Mississippi County; C. S. Dupree, State Performance Supervisor, J. A. Hemphill, Senior Field Officer, P. B. Mattox of the General Accounting Office; E. B. Jackson,

Senior Field Officer of the Landlord-Tenant Relationships Section of the Southern Division, A. A. A., and J. R. May, Collaborator, members of the Investigating Committee; J. H. Crain and J. E. Crain representing Lee Wilson and Company; T. M. Gachet, Senior Administrative Officer; and E. P. Bowyer, Attorney in the Office of the Solicitor, Department of Agriculture.

After hearing the report of the Investigating Committee and permitting the representatives of Lee Wilson and Company to offer all objections that they had to it, it was decided by the County and State Committees, in joint session, hereinafter referred to as the joint committee, to accept the report of the Investigation Committee with the following exceptions: [No exceptions as to assignments].

* * * * *

NOVEMBER 6, 1940.

REPORT OF FARMING ACTIVITIES OF LEE WILSON AND COMPANY AND TENANTS WITH REFERENCE TO THE AAA PROGRAMS, 1933 THROUGH 1939

According to the instructions contained in a letter of February 13, 1940, to Mr. J. B. Daniels, Administrative Officer in Charge, from Mr. I. W. Duggan, Director, Southern Division, enclosing a memorandum approved by Mr. R. M. Evans, Administrator, Agricultural Adjustment Administration, setting forth procedure for disposing of claims filed by Lee Wilson and Company and its tenants for payment under the various Agricultural Adjustment, Agricultural Conservation, and related programs administered through the Agri-

cultural Adjustment Administration, the following report is submitted:

An investigating Committee composed of C. S. Dupree, J. A. Hemphill, John R. May, and Walter R. Dunnavant from the Arkansas State office and E. B. Jackson from the Tenant-Landlord Relationship Section of the Southern Division, Agricultural Adjustment Administration, was set up to conduct the investigation. The General Accounting Office designated P. B. Mattox as its representative to assist in the investigation. The Mississippi County Agricultural Conservation Association office furnished personnel to assist the Committee from time to time. The Committee has from time to time received advice from the Washington office or members of its staff.

In conducting the investigation the Committee used all available county office records, State office records, and Washington office records. The Committee checked Lee Wilson and Company's books and records at Armorel, Wilson, and Lepanto. The Committee also checked the Victoria Records which had been moved to the Wilson office from Victoria prior to the investigation.

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ASSIGNMENTS FOR 1938 AND 1939

The Investigating Committee found that the regulations pertaining to assignments had been ignored frequently by the Committeemen and county office in executing, filing, and accepting assignments in 1938 and 1939.

* * * * *

The Committee found that in some cases Section I of the Forms ACP–69 covering the 1938 applications were executed in 1939. The Committee also found that Section I of the ACP–69 covering 1938 applications in a few cases were executed in December of 1938. The Committee recommends that these assignments be voided.

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U. S. GOVERNMENT PRINTING OFFICE: 1940